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No. _____

Supreme Court, U.S.

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In The

Supreme Court of the United States

October Term, 1989

PARK AVENUE, LTD.,

Petitioner.

- vs -

CITY OF DETROIT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN

— AND APPENDICES —

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QUESTION PRESENTED FOR REVIEW**I.**

WHETHER RESPONDENT'S TAX COLLECTION AND ENFORCEMENT PROCEDURES AND ITS APPLICATION OF THOSE PROCEDURES COMPORT WITH DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHERE RESPONDENT INCLUDES A TAX "SALE" NOTICE ON THE BACK OF A TAX BILL AND DOES NOT MAIL ANOTHER NOTICE TO THE DELINQUENT TAXPAYER BUT, RATHER, PUBLISHES A GENERIC WARNING IN THE NEWSPAPER AND WHERE RESPONDENT FAILS TO FOLLOW THE TAX "SALE" PROCEDURES SET FORTH IN ITS OWN CITY CHARTER.

PARTIES TO PROCEEDINGS

The parties to the proceeding below were the City of Detroit, a Michigan municipal corporation, and Park Avenue, Ltd.,¹ a Michigan corporation.

The City of Detroit was the plaintiff in the state trial court and appellee in the Michigan Court of Appeals and the Michigan Supreme Court. Park Avenue, Ltd. was the defendant in the state trial court and appellant in the Michigan Court of Appeals and the Michigan Supreme Court.

Park Avenue, Ltd. is the Petitioner in this Court. The City of Detroit (also referred to in this Petition as the "City") is the Respondent in this Court.

Park Avenue, Ltd. has no parent companies, subsidiaries, or affiliates to list pursuant to Rule 28.1.

¹ For reasons unrelated to this lawsuit, Petitioner's corporate name was changed during the pendency of this lawsuit to Tuller-Park Avenue, Ltd. In all other respects, the corporation remains unchanged.

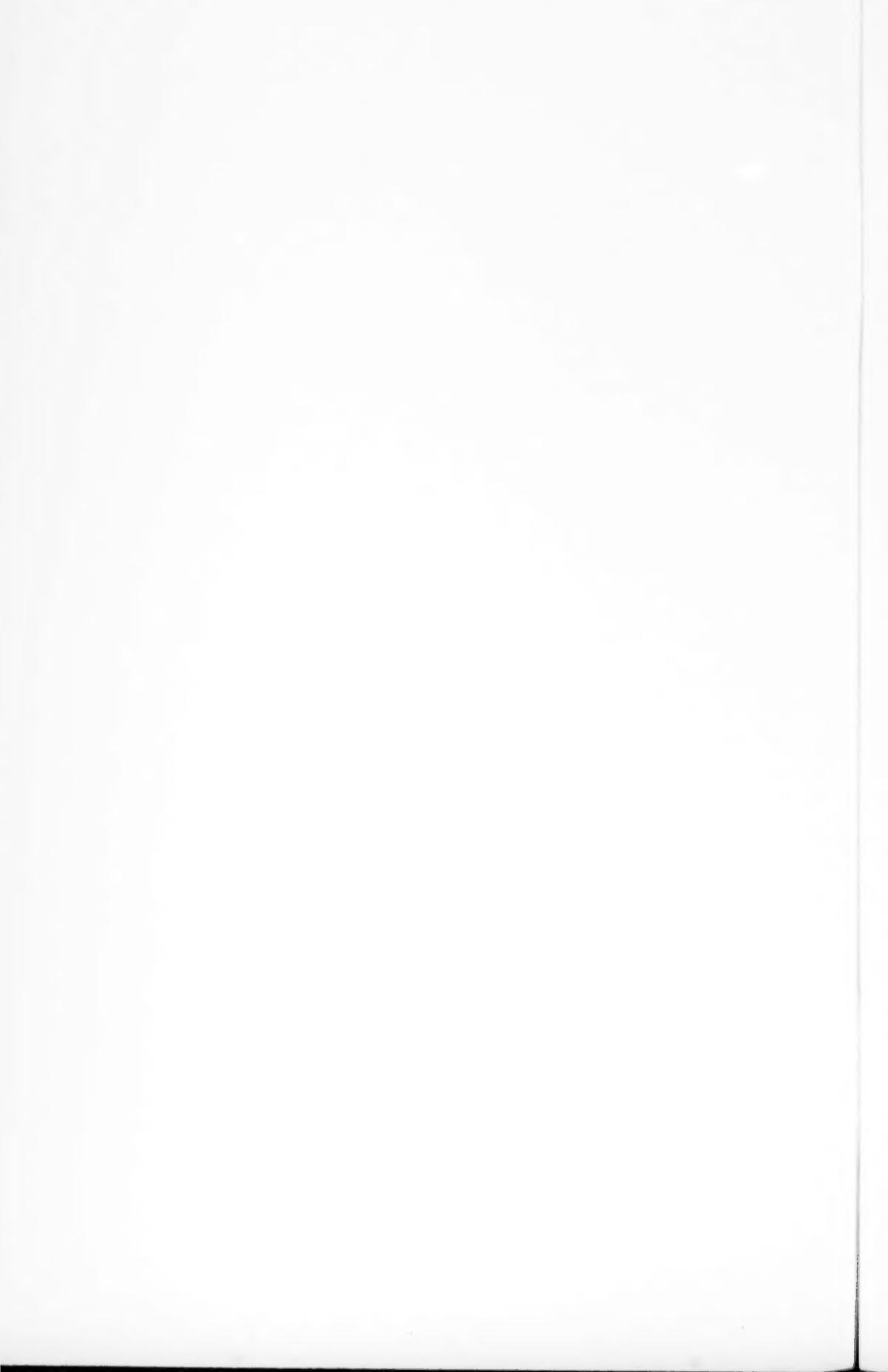
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**PETITION FOR A WRIT OF CERTIORARI
TO THE THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN**

Petitioner, Park Avenue, Ltd, respectfully prays that a writ of certiorari issue to review the opinion and judgment of the Third Judicial Circuit Court of Michigan entered in the above-entitled proceeding on February 18, 1986.

OPINIONS BELOW

The opinion (Appendix A) and judgment (Appendix B) of the Third Judicial Circuit Court are unpublished.

The order of the Michigan Court of Appeals dismissing Petitioner's appeal as of right and inviting it to seek discretionary review (Appendix C) is unpublished. The order of the Michigan Supreme Court denying Petitioner's request for discretionary review of the Court of Appeals' dismissal (Appendix D) is reported as *City of Detroit v Park Avenue, Ltd*, 431 Mich 880 (1988).

The order of the Michigan Court of Appeals denying Petitioner's request for discretionary review of the trial court judgment (Appendix E) is unpublished. The order of the Michigan Supreme Court denying Petitioner's request for discretionary review of the trial court judgment (Appendix F) is reported as *City of Detroit v Park Avenue, Ltd*, 433 Mich 896 (1989). That Court's order denying reconsideration (Appendix G) is unpublished.

SUPREME COURT JURISDICTION

Petitioner seeks review of a February 18, 1986, judgment of the Third Judicial Circuit Court holding that Petitioner was afforded due process, in conformity with US Const, Am. XIV, when its real property was sold at a tax "sale" conducted by Respondent.

Following entry of the trial court judgment, Petitioner appealed as of right to the Michigan Court of Appeals. However, on January 13, 1988, Petitioner's appeal was dismissed for procedural reasons not pertinent to this Petition (see Appendix C, *infra*). The Michigan Court of Appeals invited Petitioner to invoke that Court's discretionary review powers under the Michigan Court Rules. Before availing itself of that relief, however, Petitioner sought leave to appeal the dismissal to the Michigan Supreme Court. On October 19, 1988, that Court refused to exercise its discretionary review powers (see Appendix D, *infra*).

Petitioner then sought leave to appeal to the Michigan Court of Appeals in accordance with that Court's January 13, 1988, order. On March 9, 1989, the Court of Appeals denied Petitioner's request (see Appendix E, *infra*). The Michigan Supreme Court likewise refused to grant leave to hear Petitioner's appeal, by order dated October 31, 1989 (see Appendix F, *infra*). That Court

also refused to reconsider its previous decision by order dated January 29, 1990 (see Appendix G, *infra*).

Thus, Petitioner has exhausted its appeal remedies, both as of right and discretionary, and this Court has jurisdiction under 28 USC § 1257(a) to review the final judgment of the Third Judicial Circuit.

STATUTES INVOLVED

US Const, Am. XIV, § 1, provides in pertinent part:

"... nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

Detroit City Charter, § 8-403, provides:

1. Except as otherwise provided by this charter or ordinance, the rights, duties, powers, immunities and procedures established by state law shall apply in the collection and enforcement of City property taxes.
2. City property taxes shall become a debt of the persons liable for them on the date provided by state law and shall become payable, and a lien upon the property, on the 1st day of the City's fiscal year or such other date as may be provided by ordinance.
3. Property taxes shall become delinquent if they remain unpaid on September 1. However, when any person shall pay $\frac{1}{2}$ of the City taxes on any property on or before the 15th day of August, the remaining $\frac{1}{2}$ shall not become delinquent until the 16th day of January. The City may, by ordinance, provide

interest and penalties for delinquent City property taxes.

4. State, county and school taxes shall be collected and returned by the City treasurer in accordance with state law. However, except as otherwise provided by law or ordinance, city property taxes shall not be returned to the Wayne County treasurer under state law.
5. Before the end of the City's fiscal year, the treasurer shall give reasonable notice to all persons who are liable for delinquent real property taxes that, on the last day of the fiscal year, the City's lien on real property for delinquent City real property taxes shall be deemed 'sold' to the finance director.
6. Two years after such a sale of the lien on any real property, the City may bring a civil action to foreclose its lien.

If the City prevails in the action, the judgment, which may not be entered before 120 days have expired from the filing of the complaint, shall provide that possession of the real property to which the lien attached shall be given to the City, unless the judgment and all costs are paid within 60 days. There shall be no redemption period under the judgment beyond the 60 days. The judgment when final shall be conclusive evidence of the City's title in fee simple, subject only to unextinguished interests or encumbrances."

MCL 211.61a; MSA 7.106 provides in pertinent part:

"As soon as the state treasurer's petition, with a list of delinquent tax lands is filed with the

county clerk under section 61 [MCL 211.61; MSA 7.105] and not less than 30 days before the date fixed for the annual tax sale, the county treasurer of each county in this state shall notify such persons, according to the records of his office, each piece or parcel of land upon which taxes are then delinquent, and which are subject to sale at the next ensuing annual tax sale by mailing to the last known address of those persons, a notice in substantially the form prescribed below. The notice shall be sent by first class mail, address correction requested, to each person, directed to his last known post-office address with postage fully prepaid thereon:

Office of the county treasurer of _____
County, Michigan.

Sir:

You are hereby notified that the annual tax sale of lands for delinquent taxes of 19____, and prior years for the county of _____, will be made at the county treasurer's office of said county at the county seat of said county, on the ____ day of May, 19____. According to the records of this office the following described lands are assessed to you and certain years' taxes thereon appear to be unpaid as stated below.

Description of land: _____

Amount of delinquent taxes unpaid for the year 19____, \$ _____. If the taxes on the above mentioned lands are not paid prior to the date upon which said sale is to be held, then said lands will be sold for the taxes above stated. Any person with an interest in

this land has a right to be heard at the circuit court hearing authorizing the tax sale. This hearing will be held on the ____ day of _____, 19____, at _____ (time), at _____ (place of hearing). To be heard, you must file written objections in advance, as provided by law.

Very truly yours,

County Treasurer."

STATEMENT OF THE CASE

Petitioner owns a parcel of commerical real property located in the downtown area of Detroit, in what is essentially a blighted area of the City which is in the process of being revitalized. On February 18, 1986, the Third Judicial Circuit Court of Michigan entered a judgment foreclosing a tax lien which Respondent had levied on Petitioner's real property for non-payment of real property taxes. That Court also awarded possession of the property to Respondent within 60 days unless Petitioner paid the judgment and costs within that time.

The City of Detroit's tax collection procedure somewhat parallels the state collection procedures contained in the General Property Tax Act, MCL 211.1-211.157; MSA 7.1-7.214. In a nutshell, City property taxes become a lien on the real property on July 1 (the first day of the City's fiscal year). If still unpaid the following June 30, those delinquent taxes are deemed "sold" to the finance director on June 30; the finance director, in turn, delegates further collection proceedings back to the City treasurer. If the taxes remain unpaid for an additional two-year period following the

tax "sale," the City files a foreclosure action in circuit court seeking possession of the real property. If the City prevails, the taxpayer has 60 days to pay the taxes with interest and costs or the City gains title in fee simple.

Petitioner first raised the federal constitutional question here presented in an unsuccessful pre-trial motion to dismiss the foreclosure complaint. Undaunted by the trial court's denial, Petitioner presented, as its defense, proofs establishing the constitutional unreasonableness of Respondent's tax sale notice and its failure to follow its own City Charter. Those proofs consisted of the following evidence.

Prior to 1973, the "notice" of tax sale contained in the City Charter provided for notice by publication in a newspaper without personal notice to taxpayers. When the City Charter was amended in 1973, the drafters intended to upgrade the notice requirement so that personal notice would go to all taxpayers. The drafters intended, therefore, that "reasonable notice" be deemed personal notice to all taxpayers, similar to what the state gives pursuant to MCLA 211.61a; MSA 7106.

In an apparent effort to take the easy road rather than the constitutionally-required road, Respondent attempts to satisfy the Charter's "reasonable notice" requirement by including a message on the back of the tax bill which is sent to the taxpayer right after the taxes are due and before they are delinquent. This notice fails to reasonably notify the taxpayer of the probable consequences of non-payment of his or her real property taxes:

"If the current Real Property or Special Assessments are unpaid on *June 30th*, the taxes or special assessments will be sold to the Finance Director due to non-payment and are subject to

foreclosure proceedings in accordance with the Charter of the City of Detroit."

Respondent also publishes a generic notice in a newspaper, comprised of the following one-paragraph warning:

**"NOTICE OF DELINQUENT TAX SALE CITY
OF DETROIT GENERAL TAXES AND SPECIAL
ASSESSMENTS**

Notice is hereby given that pursuant to law the lien of the city of Detroit and the liability for taxes and/or Special Assessments levied by said City for the year 19-- on the certain lands, tenements, hereditaments, or premises located within the City of Detroit, together with the amount of all previous bids upon the same property held by said City, and in addition thereto interest, penalty, and collection fee as provided by law, will be deemed sold to the Finance Director as of the THIRTIETH DAY OF JUNE, 19--. The owners, occupants of, or parties in the land tenements, hereditaments, or premises are hereby notified to pay the lien of the City of Detroit and the liability for the taxes and/or Special Assessments levied by said City for the year 19--. In addition, certain tax liens and/or Special assessments for prior years inadvertently omitted from previous sales, and reassessmetns made in 19-- will be sold at the same time and in the same manner.

STANLEY GRUSZKOWSKI
Treasurer"

Respondent's witnesses, the City treasurer and chief of the Collections Unit, testified that they believed these two components satisfied the City's "reasonable notice" requirement.

If the taxpayer is not compelled by the above "reasonable notice" to live up to its civic responsibilities, a tax "sale" automatically occurs on June 30. This "sale," however, is really only an administrative transfer of authority to the City finance director, pursuant to the City Charter; the finance director immediately delegates that "authority" back to the treasurer for collection.

Once the taxes become delinquent, no notice is sent to the taxpayer informing him or her of this automatic "sale." Rather, Respondent sends "dunning" letters and tax bills which repeat the previous tax sale warning without informing the taxpayer that the "sale" has already occurred and that the two-year pre-foreclosure redemption period has already begun. To further confuse the taxpaying public, Respondent does not enforce its City Charter with regard to all taxpayers. It targets certain taxpayers, sending them the "dunning" notices; and remains silent with respect to other taxpayers.

Two years after the tax "sale," the matter is transferred to the Legal Department for foreclosure proceedings and to the Collection Unit for further letter-writing campaigns to selected taxpayers, explaining that foreclosure proceedings will follow, but again never informing the taxpayer that the tax "sale" occurred some time ago.

Between 1976 and 1981, Petitioner not only acknowledged that its real property taxes were delinquent but also attempted to forestall any tax "sale" by entering into an agreement with Respondent in 1980 to pay all back taxes (1976, 1977, 1978, and 1979) within 18 months from July 15, 1980, the date of the agreement. That agreement further provided for $\frac{1}{3}$ equal payments for three successive years in the event that Petitioner did not satisfy the 18-month payment requirement.

When Petitioner entered into this agreement, however, it was still unaware that its tax lien had been "sold," triggering the two-year period pre-foreclosure redemption period provided in the City Charter.

Petitioner first learned that the taxes were "sold" when it was served with the foreclosure complaint in 1984. It was only then that Petitioner realized that it had a mere 60 days from entry of the foreclosure judgment to redeem its property or its title would be severed permanently.

As Petitioner unsuccessfully argued at trial, Respondent's tax collection procedure has deprived it of a significant property interest without "reasonable notice" as required by the United States Constitution. Without notice that the tax "sale" had already occurred, Defendant lost the two-year pre-foreclosure period in which to make arrangements to pay the delinquency or sell to the property, albeit at a greatly-depreciated price. Aside from the notice problems, Petitioner also raised the due process infirmities arising out of Respondent's failure to comply with its own City Charter.

At the end of a two-day non-jury trial, the court rejected Petitioner's constitutional defenses and found that the notice prepared by the Plaintiff as part of the tax bill was reasonably designed to inform the recipient of the notice as to the consequences of nonpayment of the taxes. Because the court believed that Petitioner had reasonably adequate notice of delinquent taxes and actions which could follow if the taxes were not paid, it ruled that Respondent's method of satisfying its "reasonable notice" requirement, as found in its City Charter, passed constitutional muster. That Court also found that Respondent's failure to follow the procedures set forth in its Charter did not deprive City of Detroit taxpayers of their property without due process of law.

On appeal, after Petitioner's right of appeal was inadvertently forfeited, for procedural reasons unrelated to this appeal, its only avenue of appellate review in the state courts was to seek leave to appeal to the Michigan Court of Appeals and, if unsuccessful, to the Michigan Supreme Court. Neither appellate court exercised its discretionary powers of review, however.

Therefore, Petitioner now seeks this Court's review of the trial court's decision that the tax "sale" procedures employed by Respondent, in accordance with § 8-403 of the City Charter, and Respondent's enforcement of those procedures satisfy due process guarantees found in the United States Constitution.

THE REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER RESPONDENT'S TAX SALE PROCEDURES AND RESPONDENT'S APPLICATION OF THOSE PROCE- DURES AFFORD THE TAXPAYER DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

This Petition for Writ of Certiorari arises from the construction of the Detroit City Charter, § 8-403(5), imposed by the Third Judicial Circuit Court of Michigan. In substance, that Court held that Petitioner had "reasonable notice," as required by the United States Constitution, that its delinquent tax lien would be sold to the City finance director on the last day of the fiscal year. The trial court further found that Respondent's failure to follow its own City Charter did not deprive City of Detroit taxpayers of the minimal due process guaranteed by the United States Constitution. Certiorari should be granted to review the decision of the

Third Judicial Circuit Court that the City's tax sale procedures comport with the Fourteenth Amendment to the United States Constitution.

A. A Tax "Sale" Notice Buried On The Back Of A Tax Bill, Sent To The Taxpayer Before The Taxes Are Delinquent, And Subsequently Published Generically In The Newspaper, Violates The Fourteenth Amendment's Requirement That Taxpayers Receive Notice Reasonably Calculated To Apprise Them Of The Pendency Of A Tax "Sale" And To Present Their Objections Before They Can Be Deprived Of Their Real Property Under The United States Constitution.

Petitioner is not denying that it received, by first class mail, notice that a tax sale would result if its real estate taxes were delinquent on June 30, the end of Respondent's fiscal year. Rather, in this case of apparent first impression, Petitioner suggests that the notice actually received by City of Detroit taxpayers fails to pass constitutional muster.

The guiding light for all questions regarding notice and due process is this Court's decision in *Mullane v Central Hanover Trust Co*, 339 US 306 (1950), in which this Court explained that the due process clause requires, at a minimum, a notice and opportunity to be heard before deprivation of life, liberty or property interests (339 US at 313):

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections (citations omitted)."

However, process which is a mere gesture or which has little reality or worth is not due process. The means employed must be desirous of actually informing the party of the deprivation. 339 US at 314-315.

This Court's most recent decision in this area is *Tulsa Collection Servs v Pope*, 485 US 478 (1988), which involved construction of Oklahoma probate laws. That state's law provided that contract claims not presented to a decedent's estate within two months of publication were barred. No provision was made in the statute for actual notice to decedents' creditors. Reversing the state court decisions, this Court held that the statute failed to comport with the Fourteenth Amendment to the United States Constitution because it provided solely for notice by publication. Because decedents' creditors had a legitimate interest in the expeditious resolution of probate proceedings and the required actual notice was not so cumbersome as to hinder unduly the dispatch with which probate proceedings could be conducted, this Court concluded that due process required that actual notice, by mail or other means as certain to insure actual notice, be given to creditors whose identity was either known or could be reasonably ascertained.

Of like import is *Mennonite Board of Missions v Adams*, 462 US 791 (1983), which involved the sale of real property for delinquent taxes. Although the property owner in *Mennonite* received actual notice of the tax sale, all other interested parties were given notice by publication. The mortgage holder, which was not given notice of the tax sale, complained that the state's procedure violated due process. This Court agreed because "actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether

unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable." *Id.* at 800 (emphasis in original).

This Court has also recently considered the propriety of a "final notice" of utility shutoff and whether that notice comported with due process guarantees. In *Memphis Light, Gas & Water Div v Craft*, 436 US 1 (1978), this Court held that the petitioner had deprived the respondents of an interest in property without due process of law. The respondents were petitioner's customers. After moving into their home, they discovered two sets of gas and electric meters in their home and received two monthly bills for each set of meters. For about a year, petitioner's utility service was intermittently shut off for non-payment of bills. During this period, respondents made good faith efforts to determine the cause of the double billing. However, they were unable to obtain a satisfactory explanation or any suggestion for further recourse. Each bill contained a "final notice" stating that payment was overdue and that service would be discontinued if payment was not made by a certain date but did not apprise the customer of the availability of a procedure for discussing their dispute with designated personnel who were authorized to correct bills.

This Court affirmed the decision of the Sixth Circuit Court of Appeals that respondents had been denied due process of law because the "final notice" did not reasonably apprise them of an administrative procedure for protesting a threatened termination of utility services.

Applying the above principles to the case at bar, the issue here is whether due process requires that the City of Detroit do more than publish a notice on the back of its tax bills and in the newspaper before it can

validly foreclose on a tax lien levied for non-payment of real estate taxes.

Although *Memphis Light, Gas & Water Div* is not on all fours with the case at bar, it does stand for the principle that minimal due process requires notice which is assured to inform interested parties of an opportunity to present their objections. As applied here, Respondent failed to inform Petitioner that the tax "sale" was automatic on June 30 and that there were no hearing procedures or an opportunity to present objections. Rather, contrary to § 8-403(5), the tax "sale" notice merely informed Petitioner of some nebulous future event without specifically stating that the taxes will be "deemed sold" on June 30 and that there would be no opportunity for presenting objections. Just as the "final notice" in *Memphis Light, Gas & Water Div* was a mere gesture, the tax "sale" notice in the case at bar was a feint to deprive Petitioner of significant property rights.

Turning to § 8-403 of the City Charter, Respondent may file a civil action to foreclose its lien on real property *only* after: 1) giving reasonable notice before the end of the fiscal year (June 30) that Respondent's lien shall be deemed "sold" to the finance director, and 2) allowing for a two-year period during which Petitioner can pay the delinquent taxes before a foreclosure action is instituted.

The trial court held that the City had complied with minimal due process guarantees. This decision was reached even though the City's tax "sale" notice is buried on the back of a tax bill in small print that fails to differentiate it from the other general information contained on the back of the bill; the City mailed the "notice" before the time the taxes were delinquent; once the taxes actually became delinquent, no notice

was sent to the taxpayer informing him or her of the automatic "sale" on June 30, contrary to § 8-403(5) of the City Charter; and the only "notice" of an impending tax "sale" after the taxes become delinquent is a generic, one-paragraph warning published in the newspapers without reference to either the common address or the legal description.

According to the trial testimony, Respondent believes that it satisfies its "reasonable notice" requirement by burying the notice on the back of the tax bill, and then publishing in a newspaper a general notice of tax sale in a one-paragraph warning which does not refer to either a legal description or a common address.

This Court should grant certiorari because this procedure fails to accord even minimal due process protections found in the Fourteenth Amendment to the United States Constitution. The "notice" published on the back of the tax bill merely informed the taxpayer, who was not delinquent on his or her taxes at the time the bill was first received, that the taxes will be sold to the finance director on June 30 if they are unpaid on that date. The notice does not, however, explain that the taxes become a lien on the debtor's property on July 1, the first day of the City's fiscal year; that the taxes become delinquent if not paid in full by January 15; and that taxes not paid thereafter by June 30 will be "deemed" sold to the finance director without further notice to the taxpayer.

Once the (then-current) taxpayer receives the bill, he or she receives no further notice, once the taxes become delinquent, that the taxes must be paid by June 30 or that an automatic "sale" will occur and the taxpayer's property forfeited. Rather, the City publishes a generic warning in the newspapers and if, by chance, the taxpayer reads the warning, he or she is expected to

react by June 30. However, Respondent does continue to send "dunning" letters to the taxpayer, none of which explain that the tax "sale" is imminent and automatic. The burden on Respondent to add this information to its tax bills and subsequent collection letters is minimal. Thus, the burden on Respondent would not, in the words of this Court, be so "cumbersome" that the tax sale process would be hindered in any way.

Given the minimal burden on Respondent and its failure to include this information on its tax bills and collection letters, it must be concluded that Respondent intends its "reasonable notice" to be nothing more than a mere gesture. *Mullane*, 339 US at 315. Respondent's notification procedure, while adequate to apprise the taxpayer of the ultimate consequence of non-payment of real estate taxes, is not "reasonably calculated" to inform them of the availability of "an opportunity to present their objections." *Id* at 314.

Plainly, the City does not inform the taxpayer of the opportunity to object because the City's tax "sale" procedure is automatic. By law, the City has deprived taxpayers of the knowledge that their tax lien has been sold and that foreclosure proceedings will follow within two years unless the taxes are paid. The taxpayer is never given notice that the two-year period has started to run. Rather, the first notice to the taxpayer of the tax "sale" is when he or she is served with the foreclosure complaint. At that late date, the taxpayer stands to lose a significant property interest within 60 days of entry of the judgment. That the City stands to gain significantly by cutting the two-year pre-foreclosure redemption period to sixty days does not require further discussion.

The former Charter Commissioner for the City of Detroit testified at trial that the intent of the "reasonable notice" language in the Charter provision was to provide separate, personal notice, similar to the notice given under the State tax sale procedure, MCL 211.61a; MSA 7.106, in order to protect taxpayers from abuses which were occurring under the old Charter provisions.

Rather than protecting taxpayers, however, the City has been able to parlay the Charter provision into a vehicle for buying up large blocks of property at a fraction of the actual value. With respect to Petitioner's commercial property, the City's foreclosure translates into a substantial financial windfall for Respondent.

Petitioner's property is known as the Tuller Hotel, a multi-story building of substantial value. Although it is located in a blighted area of downtown Detroit, it stands in the shadows of substantial commercial redevelopment in the City of Detroit. By taking Petitioner's property without first giving it notice reasonably calculated to apprise it that it had lost its two-year pre-foreclosure redemption period, the City was able to "purchase" a building with a fair market value of over \$1 million for merely \$81,880.55.

The City's tax sale procedures significantly depreciate the value of the property. Once Respondent files a foreclosure complaint, the likelihood of Petitioner's finding a buyer willing to purchase a building with a potential cloud on the title is slim, if not impossible. Furthermore, as experience proved, any parties interested in purchasing the Tuller Hotel cease negotiations once they learn of the foreclosure suit. Rather, interested parties await the extinction of the sixty-day post-judgment redemption period and then negotiate with the City to purchase the property at a fraction of its value. This would result in a windfall both to the City,

which had purchased the property at a fraction of its value and which retains any profits from the sale, and to the ultimate purchaser, who would be able to purchase the building from the City at a fraction of the building's fair market value.

That the tax "sale" occurs automatically on the last day of the fiscal year is significant. Without actual notice of the "sale," Petitioner was lulled into a false sense of security that its lien was not in jeopardy and that the City had, at least temporarily, waived any right to foreclose upon the real property. This belief was in accord with the City's past practice not to foreclose on real property. Accordingly, although Petitioner was attempting to sell the real property, it believed there was sufficient time to wait out a reasonable offer rather than selling off the property at a deflated price in order to avoid the City's unfairly acquiring the property at a fraction of its value.

When Petitioner finally did receive notice of the foreclosure lawsuit, it effectively had but a few months to come up with a serious, reasonable offer for the property. Because it could not do so, it is now faced with extinction of its title. Had it been given notice two years earlier when the tax "sale" to the Finance Director occurred, the later civil action could have been avoided, thus saving the taxpayers the additional cost of a lawsuit.

In the case at bar, because the tax "sale" notice received by Petitioner was received before the taxes were even due, the only notice it actually received was the newspaper publication. As *Mullane, supra*, and its progeny instruct, this notice fails to accord with due process guarantees as found in the United States Constitution.

Taxpayers throughout the City of Detroit, particularly commercial real property owners located in areas which Respondent considers either blighted or financially attractive, are faced with significant deprivations of their property interest by virtue of the trial court's incorrect application of constitutional principles.

Because the trial court ignored the facts and misapplied the constitutional principles set forth by this Court, this Court should grant certiorari to review that erroneous decision.

B. Respondent's Failure To Follow Its Tax Collection Procedures, Found In § 8-403(5) Of The City Charter, Violates The Due Process Clause Of The Fourteenth Amendment.

Petitioner is not attempting to disclaim responsibility for its real property taxes for the tax years 1976 through 1981 or to deny that those taxes are delinquent. Nor is Petitioner questioning Respondent's right to assess or collect those delinquent taxes by conducting a tax "sale" and instituting foreclosure proceedings.

Rather, Petitioner claims that, having enacted City Charter § 8-403, Respondent is obligated to follow its Charter. In an analogous line of cases, this Court has held that a governmental agency's failure to follow its own procedural safeguards is a denial of due process. *Yellin v. United States*, 374 US 109 (1963); *Vitarelli v. Seaton*, 359 US 535 (1959); *Service v. Dulles*, 354 US 363 (1957). In each of these cases, an administrative decision was overturned because the agency failed to comply with its own procedures.

The justification for this action was explained in *Vitarelli, supra* at 539-540:

"That decision [*Cole v. Young*, 351 US 536] cannot, however, justify noncompliance by the Secretary with regulations promulgated by him in the departmental Order, which as to petitioner afford greater procedural protections in the case of a dismissal stated to be for security reasons than in the case of dismissal without any statement of reasons. Having chosen to proceed against petitioner on security grounds, the Secretary here, as in *Service*, was bound by the regulations which he himself had promulgated for dealing with such cases, even though without such regulations he could have discharged petitioner summarily."

Similarly in the case at bar, Respondent provided procedural protections in the case of a tax "sale." See City Charter § 8-403(5), *supra*. Having provided those procedural protections, Respondent and its tax collection and enforcement divisions are bound to meticulously obey the City Charter. *Yellin, supra* at 124.

Accordingly, in the words of the City's own Charter, it must "give reasonable notice to all persons who are liable for delinquent real property taxes that, on the last day of the fiscal year, the City's lien on real property for delinquent City real property taxes *shall be deemed 'sold' to the finance director* (emphasis added)." Ignoring the City Charter, however, the treasurer's office instead notifies City taxpayers that "current Real Property or Special Assessments . . . unpaid on June 30th, . . . *will be sold to the Finance Director* due to non-payment and are subject to foreclosure proceedings in accordance with the Charter of the City of Detroit (emphasis added)."

The difference between the two versions, and damage arising out of the difference, is illustrated by this case.

The treasurer's semantic deviation from the City Charter allows Respondent to shorten the taxpayer's redemption period from two years to a mere sixty days. As a result, taxpayers have forfeited significant property interests, with no compensation, and Respondent has gained significant property interests, at a fraction of the fair market value. In addition, once Respondent sells the property, it retains the proceeds, thus deriving even further significant benefits from its disregard of its City Charter.

As Petitioner's witnesses explained at trial, the drafters of the City Charter intended that the tax sale procedure found in MCL 211.61a; MSA 7.106 be incorporated into the procedures employed by Respondent to enforce its tax collections. See City Charter § 8-403(1), *supra*.

The state tax procedure expressly provides for notice to the delinquent taxpayer only after the taxes have become delinquent. As Petitioner has discussed at length above, however, the only notice received from Respondent that delinquent taxes are sold to the finance director is the notice buried on the back of the tax bill and sent to the taxpayer before the taxes have become delinquent. Once again, because Respondent does not notify delinquent taxpayers of the impending, albeit automatic, tax sale after the taxes have become delinquent, Respondent is not obeying its own Charter requirement.

Further, there was evidence adduced at trial that Respondent indiscriminantly enforces its tax collection and enforcement procedures by targeting certain taxpayers for rigorous enforcement through follow-up letters and foreclosure actions. With regard to other taxpayers, Respondent basically ignores the delinquent tax liens. Petitioner suggests that Respondent's tax collection and enforcement mechanisms must be applied

equally to all City of Detroit taxpayers. Otherwise, Respondent will continue to use its tax "sale" procedures as a vehicle for oppression and pretense.

Respondent promulgated the procedures governing tax collection and enforcement in the City of Detroit. Having done so, it should be compelled to strictly enforce its own procedures. Where it fails to do so, this Court should grant certiorari to review the decision of the trial court upholding the City's tax "sale" procedures. Even if this Court concludes that the notice of tax "sale" given to Petitioner accords with minimal due process guarantees, the City's failure to follow its own Charter still presents due process concerns which merit this Court's review.

Respectfully submitted,

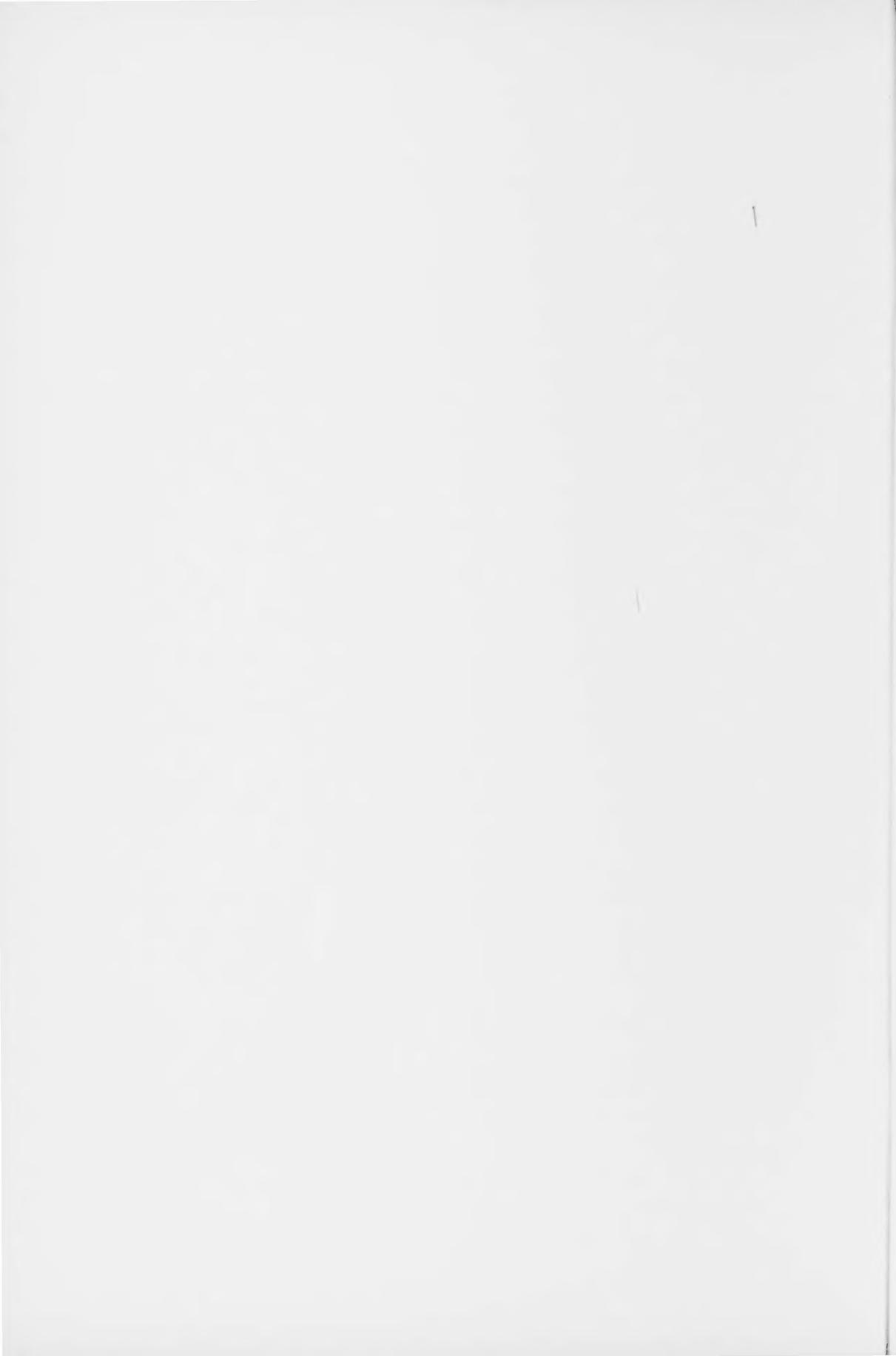
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Dated: April 25, 1990



APPENDIX TO PETITION FOR CERTIORARI

• • •

APPENDIX A

EXCERPT OF PROCEEDINGS AND TESTIMONY

(State of Michigan – Circuit Court – Third Judicial Circuit,
1719 City-County Building, Detroit, Michigan 48226)

(Proceedings of December 10, 1985)

(CITY OF DETROIT, a municipal corporation, Plaintiff,
vs. PARK AVENUE, LTD., Defendant — Judge Michael
Stacey; Civil Action No. 84-408-465-CH)

* * *

RULING OF THE COURT [TRANSCRIPT VOLUME II, pages 99-100]

THE COURT: Assuming that the Defendants are little old persons in worn white tennis shoes, and totally naieve [sic] and unsophisticated, circumstances is not easily done.

The Court finds one, that the notice prepared by the Plaintiff as part of the tax bill was reasonably designed to inform the recipient of the notice as to the consequences of nonpayment of the taxes. Foreclosure proceedings would be in accordance with the Charter of the City of Detroit.

That these notices for the years in question were sent by the Plaintiff to the Defendant. Notices were published in appropriate publications. Additional letters of delinquency were sent to the Defendant.

Payment procedure plan as to delinquent taxes was entered into by the Plaintiff and Defendant on or about

April of 1980. That in this particular case the total delinquency due is eighty-one thousand eight hundred and eighty dollars and fifty-five cents. That said amount was not paid, presently due and owing.

In essence the Defendant had reasonable adequate notice of delinquent taxes and actions which could follow if said taxes were not paid.

Consequently this Court will grant judgment to the Plaintiff and against Defendant Park Avenue Limited in the amount of eighty-one thousand eight hundred and eighty dollars and fifty-five cents. Amount of such judgment and costs is paid within sixty days from entry thereof. Or the Finance Director of the City of Detroit is hereby empowered [sic] to execute a deed to said property to the Plaintiff vesting absolute title in fee in the Plaintiff against all parties.

Ladies and gentlemen this case stands adjourned.

(Whereupon the proceedings were concluded
at or about 3:00 p.m.)

APPENDIX B

JUDGMENT

(State of Michigan — Circuit Court — County of Wayne)
(Filed February 18, 1986)

(CITY OF DETROIT, a municipal corporation, Plaintiff,
vs. PARK AVENUE, LTD., Defendants -- Judge Michael
Stacey; Civil Action No. 84-408-465-CH)

AT A SESSION of the said Court held in the City-
County Building at Detroit, Michigan on February
18, 1986.

PRESENT: HONORABLE MICHAEL STACEY,
Circuit Court Judge.

This cause having been brought on to be heard upon the complaint filed therein, and proofs having been made in open court of the regular assessment of the taxes for the tax years as set forth in the said complaint, and the sale of the said tax lien by bid of the Finance Director of the City of Detroit, as provided by the Charter of the City of Detroit and the statutes of the State of Michigan, and it appearing to the satisfaction of the Court that the foregoing and all other material allegations in the said complaint are proved against the said defendant, and from which it appears a period of more than two (2) years has elapsed from and after said sale and there is due to the City of Detroit under the terms of the Charter of the City of Detroit for the amount of said tax lien together with interest and penalty computed thereon in the sum of \$81,880.55 for the above quoted tax years.

NOW THEREFORE, on motion of PETER W. MACUGA II,
Assistant Corporation Counsel, attorney for the plain-
tiff, City of Detroit,

IT IS ORDERED AND ADJUDGED and this Court, by
virtue of the authority vested in it, does order and
adjudge that the said tax lien for the years 1976, 1977,
1977 school, 1978, 1979, 1980, 1980 school and 1981 are
valid liens therefore [sic], were properly and regularly
sold to the Finance Director of the City of Detroit, and
are hereby foreclosed unless payment of the aforemen-
tioned amount is made on or before sixty (60) days
from the date of this judgment to the City of Detroit at
the office of the City Treasurer in Detroit, Michigan. In
addition thereto, any [*HANDWRITTEN INSERTION: judgment*] interest accruing on said tax and/or special assessments
subsequent to the date of this judgment and prior to
payment thereof, shall upon the expiration of sixty (60)
days from the date hereof, become absolute and that
said defendant and all persons claiming under said
defendant shall be forever barred and foreclosed of and
from all right, title or interest in and to the premises
hereinafter described; and

IT IS FURTHER ORDERED AND ADJUDGED: That
unless the amount of this judgment and costs be paid
as ordered on or before the expiration of sixty (60) days
from the date hereof, this judgment shall be conclusive
of and vest all right, title and interest in the City of
Detroit in and to the said premises and that forthwith
upon the expiration of said sixty (60) days the Finance
Director of the City of Detroit shall execute and deliver
a proper deed to the City of Detroit, vesting in said
City absolute title in fee as against all persons claiming
any estate or interest whatsoever, whether arising or
existing prior to the time such tax or special assess-
ment first became a lien or subsequent thereto; pro-

vided, that the foreclosure hereby ordered and the deed predicated upon this judgment (1) shall not affect any state or county taxes or assessments that have been bid to the State of Michigan or remain unpaid in the office of the Auditor General of the State of Michigan or Wayne County Treasurer whether the lien for such taxes or assessments became a lien prior to or subsequent to the tax and assessment lien hereby foreclosed; (2) shall not affect estates or interests arising from taxes or assessments becoming a lien subsequent to the lien hereby foreclosed, and (3) shall not affect any restrictions in respect of building or use in common with other property in the immediate neighborhood; and

IT IS FURTHER ORDERED AND ADJUDGED: That the City of Detroit upon expiration of the said sixty (60) days from the date of this judgment, be let into possession of said premises and that all parties to this cause in possession or claiming possession, as well as their assignees, tenants and any person or persons holding them, shall deliver possession of the premises herein-after described to the City of Detroit upon the exhibition to them or any one of them of the deed, as ordered executed herein, from the Controller of the City of Detroit to the City of Detroit together with a certified copy of this judgment; and

IT IS FURTHER ORDERED: That the City of Detroit may have process issued for the possession of said premises described and for the execution of this judgment.

The property subject to the tax and/or assessment liens for the foreclosure of which this judgment is granted is located in the City of Detroit, County of Wayne and State of Michigan, and is described as follows:

West ½ of Lot 18 East ½ of Lot 19, Lots 20 through 23 and West ½ Lot 24 and Vacant Adjoining alley of Plat of Section 12 of Governor and Judge Plan, City of Detroit, Liber 34, Page 555, Deeds, Wayne County Records.

/s/ MICHAEL L. STACEY
CIRCUIT COURT JUDGE

(Certification Omitted)

APPENDIX C

ORDER DISMISSING PETITIONER'S APPEAL AS OF RIGHT

(State of Michigan — Court of Appeals)

(Certified January 13, 1988)

(CITY OF DETROIT, Plaintiff-Appellee, v PARK AVENUE LIMITED, Defendant-Appellant — Docket No. 97141; L.C. No. 84-408465 CH)

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the thirteenth day of January in the year of our Lord one thousand nine hundred and eighty-eight.

Present the Honorable: JOHN H. GILLIS, Presiding Judge;
RICHARD M. MAHER, JOSEPH B. SULLIVAN, Judges.

In this cause, appellee has filed a motion to dismiss the appeal and a motion for immediate consideration, and after due consideration by the Court,

IT IS ORDERED that the motion for immediate consideration is hereby GRANTED.

IT IS FURTHER ORDERED that the motion to dismiss is hereby GRANTED for the failure of the appellant to file a brief as required by MCR 7.212(A)(1) and (C). This dismissal is without prejudice to the filing of an application for leave to appeal under MCR 7.205(F).

(Certification Omitted)

APPENDIX D

**ORDER DENYING PETITIONER'S APPEAL
OF THE COURT OF APPEALS' DISMISSAL**

(State of Michigan — Supreme Court)

(Entered October 19, 1988)

(CITY OF DETROIT, a Michigan municipal corporation, Plaintiff-Appellee, v PARK AVENUE, LTD., Defendant-Appellant — SC: 82848; COA: 97141; LC: 84-408465-CH)

Dorothy Comstock Riley, Chief Justice; Charles L. Levin, James H. Brickley, Michael F. Cavanagh, Patricia J. Boyle, Dennis W. Archer, Robert P. Griffin, Associate Justices.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

(Certification Omitted)

APPENDIX E

**ORDER DENYING PETITIONER'S
APPLICATION FOR LEAVE TO APPEAL**

(State of Michigan — Court of Appeals)

(Entered March 9, 1989)

(City of Detroit v Park Ave. Ltd. — Docket # 113061;
L.C. # 84-408465-CH)

MICHAEL J. KELLY, Presiding Judge;

MARTIN M. DOCTOROFF, MARILYN J. KELLY, Judges.

The Court orders that the application for delayed appeal is DENIED for lack of merit in the grounds presented.

/s/ Michael J. Kelly
Presiding Judge

(Certification Omitted)

APPENDIX F

ORDER DENYING PETITIONER'S APPLICATION FOR LEAVE TO APPEAL

(State of Michigan — Supreme Court)

(Entered October 31, 1989)

(CITY OF DETROIT, a Michigan municipal corporation,
Plaintiff-Appellee, v PARK AVENUE, LTD., Defendant-
Appellant — SC: 85817; COA: 113061; LC: 84-408465-CH)

Dorothy Comstock Riley, Chief Justice; Charles L.
Levin, James H. Brickley, Michael F. Cavanagh, Patricia
J. Boyle, Dennis W. Archer, Robert P. Griffin, Associate
Justices.

On order of the Court, the application for leave to
appeal is considered, and it is DENIED, because we are
not persuaded that the question presented should be
reviewed by this Court.

(Certification Omitted)

APPENDIX G

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

(State of Michigan — Supreme Court)

(Entered January 29, 1990)

(CITY OF DETROIT, a Michigan municipal corporation,
Plaintiff-Appellee, v PARK AVENUE, LTD., Defendant-
Appellant — SC: 85817; COA: 113061; LC: 84-408465-CH)

Dorothy Comstock Riley, Chief Justice; Charles L.
Levin, James H. Brickley, Michael F. Cavanagh, Patricia
J. Boyle, Dennis W. Archer, Robert P. Griffin, Associate
Justices.

On order of the Court, the motion for reconsideration
of this Court's order of October 31, 1989 is considered,
and it is DENIED, because it does not appear that the
order was entered erroneously.

(Certification Omitted)

(2)

Supreme Court, U.S.
FILED
JUN 5 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1678

In The
Supreme Court of the United States

—♦—
October Term, 1989
—♦—

PARK AVENUE, LTD.,

Petitioner.

vs.

**CITY OF DETROIT,
a Michigan Municipal Corporation,**

Respondent.

**BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI**

CITY OF DETROIT LAW DEPARTMENT

By: FRANK W. JACKSON P23164

Of Counsel

Supervising Assistant Corporation Counsel

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No. 89-1678

In The
Supreme Court of the United States

—♦—
October Term, 1989
—♦—

PARK AVENUE, LTD.,

Petitioner.

- vs -

**CITY OF DETROIT,
a Michigan Municipal Corporation.**

Respondent.

**BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI**

**CONCISE STATEMENT OF
MATERIAL PROCEEDINGS AND FACT**

In March, 1984, the City of Detroit commenced an action in Wayne County Circuit Court to foreclose its property tax liens against a vacant commercial building located at 521 Park, Detroit. The building was owned by "Park Avenue, Ltd.," a corporation, one of whose principal officers and stockholders is also an attorney, John J. Hughes, III, who has and continues to represent the corporation.

At the time the action was filed, the tax delinquency dated back to 1976 and amounted to nearly \$100,000.00. Petitioner did not deny the delinquency but claimed Respondent's notice and foreclosure procedure violated constitutional due process requirements.

At trial, Judge Michael J. Stacey specifically ruled that the City had provided reasonable, adequate notice and entered judgment for the City on February 16, 1986.

After Park Avenue, Ltd.'s motion for new trial was denied, it filed a Claim of Appeal on December 5, 1986.

The Michigan Court of Appeals dismissed the appeal on January 13, 1988 because of Park Avenue, Ltd.'s failure to file its brief on appeal despite numerous warnings from the Court over a ten-month period. The reasons cited by Petitioner for this neglect amounted to ignorance of the correct procedure and lack of money.

Four subsequent appeals were also denied. During the pendency of their numerous appeals, Petitioner refused to pay their 1985 Wayne County taxes on the subject property and lost the subject property to the State of Michigan.

By deed, the State of Michigan transferred the property to the City of Detroit on April 1, 1988.

THE REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

I.

CERTIORARI SHOULD BE DENIED BECAUSE PETITIONER'S CONSTITUTIONAL CLAIMS LACK MERIT.

The question of the constitutionality of the City of Detroit's tax foreclosure process has been considered three times by the Michigan Supreme Court. In *City of Detroit v. Safety Investment Corp.*, 288 Mich 511, 285 NW 42 (1939), the Court held the judicial foreclosure process to be valid and constitutional. Accord, *City of Detroit v. Collateral Liquidation, Inc.*, 295 Mich 440,

295 NW 218 (1940); *City of Detroit v. O'Connor*, 302 Mich 531, 5 NW2d 453 (1942). The Michigan Court of Appeals, more recently, has reiterated those holdings in *City of Detroit v. Alsip*, 145 Mich App 794, 378 NW2d 603 (1985).

The validity of the procedure employed by Respondent to foreclose its tax liens cannot be seriously questioned.

Petitioner argues that Respondent did not meet the notice and due process requirement of *Mullane v. Central Hanover Trust Co.*, 339 US 306 (1950).

City Charter § 8-403 requires that "reasonable notice" shall be given before the end of the City's fiscal year that the City's tax lien shall be deemed sold to the City's finance director. This was done by the following methods: as part of the tax bill and publishing in the newspaper.

Petitioner's contention that Respondent did not provide adequate notice of the tax foreclosures is, at best, frivolous. Mr. Hughes, both a principal officer of Petitioner and its attorney, in the prior stages of this litigation, has been licensed to practice law in Michigan for over twelve years and has also been a professional real estate investor and manager, as stated in his deposition.

For him to assert, as he did at trial, on appeal, and again here, that he had inadequate notice of the impending loss of property that was *seven years* tax delinquent simply insults this Court's intelligence. Petitioner has admitted owing the taxes at issue, over \$100,00.00. With no prospective purchaser on the horizon, how Petitioner could have hoped to save the property from foreclosure is beyond the scope of any reasonable imagination. In his deposition, Mr. Hughes admitted an awareness as early as 1980 of a serious tax

delinquency on the subject property. Yet he has suggested to this Court that the eventual commencement of Respondent's foreclosure action in 1984 allowed him insufficient time to sell the property.

II.

CERTIORARI SHOULD ALSO BE DENIED BECAUSE THE ISSUE IS NOW MOOT.

While Petitioner argued about whether the City provided adequate, reasonable notice, Petitioner did not pay the 1985 Wayne County taxes on the subject property and the State of Michigan, in an independent proceeding, foreclosed upon the property in accordance to the Michigan General Property Tax Act. MCL 211.61 *et seq.* On April 1, 1988, the State of Michigan deeded the subject property to the City of Detroit.

As Petitioner's interest in the property has been extinguished by the State of Michigan's foreclosure, the issue is now moot and Petitioner lacks standing.

CONCLUSION

The Respondent, City of Detroit, has followed the due process requirements of its real property tax foreclosure. Furthermore, as the property was foreclosed upon by the State of Michigan, the issue is now moot. Wherefore, Respondent prays that this Court deny Petitioner's petition for writ of certiorari.

Respectfully submitted,

CITY OF DETROIT LAW DEPARTMENT

By: /s/ FRANK W. JACKSON P23164

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Dated: June 5, 1990